SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 04/09/97

HONORABLE LAWRENCE W. CRISPO JUDGE

HONORABLE JUDGE PRO TEM
10.

S. RAMEY, CSL Deputy Sheriff
DEPT. 58

C. MASON DEPUTY CLERK
S. SOLOMON, ASST. CLK
NONE ELECTRONIC RECORDING MONITOR

C. OLESON, CSR #3025 Reporter

2:00 pm BC008240

SYED MOUZZAM ALI
VS.
CITY OF LOS ANGELES

170.6 JUDGE DIANE WAYNE

Plaintiff Counsel ROSARIO PERRY [X]

Defendant Counsel MICHAEL KLEKNER [X]

NATURE OF PROCEEDINGS:

COURT TRIAL IN PROGRESS
Court Trial resumes from March 27, 1997.

The Court finds for the Plaintiff as to Phase I of this matter.

The Court issues it's [sic] Statement of Decision, attached hereto, consisting of 5 pages and incorporated herein.

As previously stipulated, all exhibits and testimony accepted in Phase I are also accepted in Phase II.

All parties are excused and ordered to return at 10:30 am on April 14, 1997 in this department.

Notice waived.

NATURE OF PROCEEDINGS: STATEMENT OF DECISION

This is a bifurcated trial where, in phase one, the court rules on the issue of taking. The Court heard evidence as to whether there was a taking of property. Evidence was presented by declaration, deposition, documentary evidence and oral testimony submitted by both parties. The court having read and considered such evidence, now finds as follows:

PHASE 1: FOR THE PLAINTIFF.

The Court's Factual Findings

In 1982, Plaintiff Syed Mouzzam Ali ("Ali") purchased the Ferraro Hotel ("Ferraro"), which was located at 2065 West 6th Street in Los Angeles. Ali improved the building and housed prison parolees there until a fire damaged the Ferraro on November 17, 1988. The day of the fire, an inspector for the City of Los Angeles ("the City") determined that the property was 35% destroyed. Based upon other credible evidence, the Court finds that the Ferraro sustained over 50% damage and was not economically feasible to repair. The demolition permit

(discussed below) should have been granted by the City when first requested by Ali.

On December 16, 1988, Ali contracted with Fred Harouni ("Harouni") to sell the property on which the Ferraro was located for $2,700,000. Pursuant to their agreement, Ali and his close financial advisor [sic], Alan Hilton ("Hilton"), applied for a demolition permit from the City on January 19, 1989. Building and Safety Department ("BSD") Inspector Clarence Crisp inspected the property on February 2, 1989 and issued an order for the demolition of the Ferraro, effective February 13, 1989. The City issued an abate order to demolish the Ferraro on February 13, 1989. On March 17, 1989, Inspector Crisp rescinded his February 13 abate order to demolish the hotel. He also demanded that the Ferraro be repaired.

Ali, Hilton and Harouni made repeated inquiries regarding their application for a demolition permit from the City. They made multiple contacts with BSD and Councilwoman Gloria Molina's ("Molina") office. On June 14, 1989, Ali received a letter from Molina's office indicating that the Ferraro was designated a Single Residence Occupancy ("SRO"). Under City regulations, an SRO building could not be demolished unless the City grants a hardship exemption. Molina subsequently offered to present a resolution to the City for a hardship petition should provisions for low income housing be included in the proposed development on that site.

On July 4 and July 13, 1989, the Ferraro sustained further damage by fire. On August 10, 1989, the City ordered Ali to secure the Ferraro and post twenty-four hour guards on the property. The City subsequently

found that Ali had failed to comply with this order. Councilwoman Molina then presented a resolution which the City Council passed, allowing the City to post guards on the property and the Department of Public Works to board up the Ferraro.

The City ultimately determined that the Ferraro was not an SRO and granted Ali's request for a demolition permit in August 1990. Demolition of the Ferraro began on August 17, 1990. The property was finally sold to Harouni for $2,350,000, which was $350,000 less than the previously agreed-upon contract price.

The Court independently finds, as was found by the Court of Appeal, that the delay in the issuance of the demolition permit was not caused by Ali's conduct and that the City was responsible for all of the delay. The court also finds that Ali acted properly in his attempts to obtain the demolition permit.

Basis of Decision

A taking of property occurs when a government regulation eliminates the economic viability of property to its owner. *Lucas v. South Carolina Coastal Council* (1992), 505 U.S. 1003. A taking also occurs if the government physically occupies the property. *Loretto v. Teleprompter Manhattan CATV* (1982) 458 U.S. 419. When a taking occurs, the government must pay just compensation to the property owner. U.S. CONST., AMEND V. Just compensation is required even if the taking is a temporary one. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987) 482 U.S. 304.

The court finds that the City effected both regulatory and physical takings.

Regulatory taking: The denial of Ali's application for a demolition permit pursuant to the City's Rent Stabilization Ordinance ("RSO") constituted a regulatory taking. A regulatory taking occurs when an ordinance "does not substantially advance legitimate state interests or denies an owner economically viable use of his land." *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260.

The City's initial designation of the Ferraro as an SRO was erroneous. The SRO ordinance prevented the immediate demolition of the Ferraro. This denied Ali the benefits of his contract with Harouni for the sale of the property on which the Ferraro stood. As a result of the November 17, 1988 fire, the property was damaged beyond feasible repair. Consequently, demolition was the only economically viable option for the Ferraro's owner. Additionally, the City later evicted the few remaining tenants still occupying the hotel, further denying Ali the rents the Ferraro generated.

Physical Taking: The City's posting of guards on the property constituted a physical taking of the Ferraro. "A public entity . . . 'takes' . . . private property when it physically invades that property in any tangible manner." *San Diego Gas & Electric Co v. Superior Court* (1996) 13 Cal. 4th 893, 940.

The City claims that posting guards on the Ferraro promoted public health and safety. Health and safety issues traditionally fall within the City's police powers. However, because the City itself was responsible for the erroneous designation of the Ferraro as an SRO, police

powers may not be used to justify its actions. The need to exercise the City's police powers to eradicate the health and safety problems posed by the Ferraro would not have arisen had the City not denied Ali's demolition permit. The health and safety concerns which arose after the denial of the demolition permit stem directly from the City's failure to allow the demolition of the Ferraro. The City itself created the health and safety concerns which it subsequently attempted to address.